

Appeal from decision of New Mexico State Office, Bureau of Land Management, dismissing protest of proposed land exchange. NM 52568.

Affirmed.

1. Exchanges of Land: Generally -- Federal Land Policy and Management Act of 1976: Exchanges

A protest against approval of a proposed land exchange, pursuant to sec. 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1716 (1976), is properly dismissed where the protestant has not established that BLM did not adequately consider the public interest or that the lands exchanged are not of equal value.

APPEARANCES: F. F. Montoya, pro se; John H. Harrington, Esq., Office of the Field Solicitor, U.S. Department of the Interior, Santa Fe, New Mexico, for the Bureau of Land Management.

#### OPINION BY ADMINISTRATIVE JUDGE BURSKI

F. F. Montoya has appealed from a decision of the New Mexico State Office, Bureau of Land Management (BLM), dated August 18, 1982, dismissing his protest of a proposed land exchange.

Appellant is the holder of grazing privileges in the Flora Vista Allotment No. 5140, aggregating a total of 1,632 animal unit months (AUM's) situated northwest of Farmington, New Mexico. 1/ On May 14, 1982, BLM published a notice in the Federal Register of a proposed land exchange under

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1/ Effective Jan. 8, 1982, appellant transferred his grazing rights to Paul C. Bandy, pursuant to a private lease agreement. Under that agreement, dated Jan. 7, 1982, the lessee agreed to transfer the grazing rights back to appellant "on or before June 1, 1983." The agreement also included an option to purchase.

which BLM and the Forest Service, U.S. Department of Agriculture, agreed to transfer approximately 20,286.94 acres of land to the city of Albuquerque in exchange for approximately 7,400 acres of land (the Elena Gallegos Grant land). 47 FR 20898 (May 14, 1982). <sup>2/</sup> The cited authority for the exchange was principally section 206 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1716 (1976). An "Environmental Assessment for Elena Gallegos Grant Exchange" (EA), prepared in connection with the proposed land exchange, states that 165 AUM's within the Flora Vista Allotment would be affected by the land exchange (EA at 76).

On April 26, 1982, appellant filed a letter objecting to the proposed land exchange. Appellant argued that BLM had not adequately considered the impact of the exchange on grazing interests and that the value of the Federal land selected exceeds the value of the private land to be acquired. In its August 1982 decision, BLM dismissed appellant's protest. BLM stated that an environmental assessment had been prepared. In addition, BLM stated that appraisals of the Federal and private land had been prepared in accordance with uniform appraisal standards, approved by BLM and "provided the basis for an equal value exchange, which is the only basis of exchange authorized by [section 206 of FLPMA, supra]."

In his statement of reasons for appeal, appellant contends that BLM never adequately considered the impact of the exchange on grazing or wildlife, that the "exchange ratio" was actually improper, and that there was no requirement that the new boundary of his allotment be fenced by the prospective owner of the adjoining land. Appellant argues that he would be liable for trespass in the event his livestock strayed over the boundary. <sup>3/</sup>

[1] As a point of departure, we note that the holder of a grazing permit does not have a vested right in the land covered by his permit and such land is available for selection by a state. Bryner Wood, 52 IBLA 156, 88 I.D. 232 (1981). Similarly, such land will be available for an exchange \_\_\_\_\_

<sup>2/</sup> By Federal Register notice, dated July 9, 1982, BLM stated that it would include an additional 2,928.61 acres of public land in the proposed exchange.

<sup>3/</sup> On Oct. 5, 1982, Congress "authorized and directed" the Secretary of Agriculture, in cooperation with the Secretary of the Interior, to proceed with the proposed land exchange. Act of Oct. 5, 1982, P.L. 97-283, 96 Stat. 1215, 1216 (1982). In addition, Congress provided that "[t]ransactions necessary to effect the exchange authorized by this section \* \* \* shall be made within 90 days of enactment of this Act." Id. at 1217. The deadline was Jan. 3, 1983. On Nov. 29, 1982, the Office of the Field Solicitor filed a motion to dismiss the appeal contending that the Act of Oct. 5, 1982, supra, "withdraws from the Board of Land Appeals jurisdiction to entertain the instant appeal." We disagree. We find nothing in the Act or its legislative history which prohibits or can be construed as limiting the proper resolution of pending administrative appeals, in accordance with the Board's delegated authority. We note that the exchange agreement between the Forest Service, BLM, and the city of Albuquerque, dated June 1, 1982, was expressly made subject to the final disposition of any administrative appeal. Accordingly, we proceed to our adjudication. The motion to dismiss is denied.

pursuant to section 206 of FLPMA, supra. It is not exempt merely because it is being used for grazing or because other land exists that is not grazed.

Section 206(a) of FLPMA, supra, does require that Federal land may be disposed of by exchange "where the Secretary concerned determines that the public interest will be well served by making that exchange." In considering the "public interest," section 206(a) directs the Secretary to give "full consideration to \* \* \* the needs of State and local people, including needs for lands for \* \* \* food, fiber, minerals, and fish and wildlife." Id.

Appellant argues that BLM did not give adequate consideration to the impact of the exchange on grazing or wildlife. We disagree. The environmental assessment prepared in connection with the proposed land exchange amply demonstrates that BLM considered the impact on grazing and wildlife with respect to each of the units of Federal land designated for exchange. Moreover, appellant has presented no evidence that the exchange is not in the public interest.

Section 206(b) of FLPMA, supra, further requires that the value of the lands exchanged "either shall be equal, or if they are not equal, the values shall be equalized by the payment of money to the grantor or to the Secretary concerned."

The record indicates that the proposed land exchange has been partially completed. <sup>4/</sup> Attached to the case file is a "Summary" of the exchange which indicates that the value of Federal lands "designated for exchange" exceeds the value of the offered private land. However, the summary also states that "[i]f resolution of the pending appeal is favorable to the United States the exchange will continue to the extent of conveying public lands equal in value to the grant lands being acquired by the United States." We note also that for purposes of appraisal the Federal land designated as suitable for exchange was divided into individual parcels, to facilitate the dropping of some parcels in order to achieve an equal exchange. See letter from State Director, New Mexico, BLM, to Regional Forester, Forest Service, dated July 22, 1982.

Appellant's statement of reasons also implies that the appraisal of the Federal land selected was manipulated in order to satisfy the equal value exchange requirement of section 206(b). Appellant presents no evidence to dispute the appraisals and we can find no basis for overturning them. In the absence of any evidence that the appraisal method was erroneous or that the values were excessive, the appraisal will be upheld. Pacific Power and Light Co., 65 IBLA 50 (1982), and cases cited therein; see also Paul Kellerblock, 38 IBLA 160 (1978).

Finally, appellant objects to the proposed exchange on the basis that BLM has not required the prospective owner of the adjoining land to fence the

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<sup>4/</sup> On July 23, 1982, the city of Albuquerque conveyed 7,025.84 acres to the United States. In exchange, the United States has so far conveyed 11,619 acres to the city.

boundary with appellant's remaining allotment. The Solicitor, however, correctly points out in his response to appellant's statement of reasons, that the State of New Mexico "would require the new owner of land to fence cattle out. See N.M. Stat. Ann. § 77-16-1 (1978)." The Solicitor, thus, notes that because a livestock owner is only liable for a willful trespass, "the consequences of not fencing fall upon the new owner -- not the appellant." We agree. We conclude that appellant has not presented adequate justification for not proceeding with the proposed land exchange. Accordingly, BLM properly dismissed appellant's protest.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

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James L. Burski  
Administrative Judge

We concur:

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C. Randall Grant, Jr.,  
Administrative Judge

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Douglas E. Henriques  
Administrative Judge

